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EXAMINER

NGUYEN, THU HA T

ART UNIT

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2153

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

99

<b>Office Action Summary</b>	<b>Application No.</b> 10/542,116	<b>Applicant(s)</b> CHARZINSKI ET AL.	
	<b>Examiner</b> THU HA T. NGUYEN	<b>Art Unit</b> 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/21/08.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. Claims **19-38** are presented for examination.
2. Claims 19, 23, 27 and 38 are currently amended.

**Response to Arguments**

3. Applicant's arguments filed 12/21/07 have been fully considered but they are not persuasive:

4. Applicant argues that Billhartz does not teach or suggest the feature of the data packets are routed via the second transmission path if the first transmission path is interrupted and no other transmission path has a positive traffic distribution weighting. In response to applicant's argument, the examiner submits that Billhartz does teach the feature of the data packets are routed via the second transmission path if the first transmission path is interrupted and no other transmission path has a positive traffic distribution weighting as shown in paragraphs [0014], [0032-0044], [0047-0054], [0080-0081].

5. Therefore, the examiner asserts that cited prior art teaches or suggests the subject matter broadly recited in independent claims 19, 23, 27 and 38. Claims 20-22, 24-26, and 28-27 are also rejected at least by virtue of their dependency on independent claims and by other reasons set forth in this office action.

6. Applicants still have failed to identify specific claim limitations that would define a patentable distinction over cited prior arts. Accordingly, rejections for claims 19-38 are rejected as below.

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**Claim Rejections - 35 USC § 102**

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

OR

e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 19-38 are rejected under 35 U.S.C. § 102(e) as being anticipated by **Billhartz et al.** U.S. Pub. No. **2003/0202476**.

9. As to claim 19, **Billhartz** teaches the invention as claimed, including a method for routing data packets having a destination address in a packet-switching data network, wherein a first and a second transmission path is assigned to the destination address, the first and second transmission paths included in a routing table of a network node of the data network, wherein the first and second transmission paths have traffic distribution weightings indicating a traffic load allocated to each transmission path, the method comprising:

assigning a maximum traffic distribution weighting to the first transmission path (paragraphs [0041-0043], [0048-0054], [0068-0071]); and

assigning a minimum traffic distribution weighting to the second transmission path, wherein data packets are routed via the first transmission path during undisturbed operation and the data packets are routed via the second transmission path if the first transmission path is interrupted and no other transmission path has a positive traffic distribution weighting (paragraphs [0014], [0032-0044], [0047-0054], [0080-0081]).

10. As to claim 20, **Billhartz** teaches the invention as claimed in claim 19, wherein, in the event of failure of the first transmission path, the second transmission path is given the maximum traffic distribution weighting ([0032-0044], [0050-0054], [0080-0081]).

11. As to claim 21, **Billhartz** teaches the invention as claimed in claim 19, wherein, in the event of failure of the first transmission path, a third transmission path is calculated, which is given the minimum traffic distribution weighting ([0032-0044], [0050-0054]).

12. As to claim 22, **Billhartz** teaches the invention as claimed in claim 19, wherein a network node is controlled such that the transmission path on which a network node receives a data packet is blocked for the return transmission of the same data packet ([0036-0038]).

13. As to claim 23, **Billhartz** teaches the invention as claimed, including a method for routing data packets having a destination address in a packet-switching data network, wherein a first, a second, and a third transmission path is assigned to the destination address, the first, second, and third transmission paths included in a routing table of a network node of the data network, wherein the first, second, and third transmission paths have traffic distribution weightings indicating a traffic load allocated to each transmission path, the method comprising:

assigning a maximum traffic distribution weighting to the first transmission path (paragraphs [0041-0043], [0048-0054], [0068-0071]); and

assigning a minimum traffic distribution weighting to the second and to the third transmission path, wherein data packets are routed via the first transmission

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path during undisturbed operation and the data packets are routed via the second or third transmission path if the first transmission path is interrupted and no other transmission path has a positive traffic distribution weighting (paragraphs [0014], [0032-0044], [0047-0054], [0080-0081]).

14. As to claim 24, **Billhartz** teaches the invention as claimed in claim 23, wherein, in the event of failure of the first transmission path, at least one other transmission path is given a traffic distribution weighting that deviates from the minimum traffic distribution weighting ([0032-0044], [0050-0054], [0080-0081]).

15. As to claim 25, **Billhartz** teaches the invention as claimed in claim 23, wherein, in the event of failure of the first transmission path, at least one additional transmission path is calculated that is given the minimum traffic distribution weighting ([0032-0044], [0050-0054], [0080-0081]).

16. As to claim 26, **Billhartz** teaches the invention as claimed in claim 23, wherein a network node is controlled such that the transmission path on which a network node receives a data packet is blocked for the return transmission of the same data packet ([0036-0038]).

17. As to claim 27, **Billhartz** teaches the invention as claimed, including a method for routing data packets having a destination address in a

packet-switching data network, wherein a first, a second, and a third transmission path is assigned to the destination address, the first, second, and third transmission paths included in a routing table of a network node of the data network, wherein the first, second, and third transmission paths have traffic distribution weightings indicating a traffic load allocated to each transmission path, the method comprising assigning a minimum traffic distribution weighting to the third transmission path, wherein the third transmission path is used for the transmission of data packets only in the event of failure of at least a part of both the first and second transmission paths and no other transmission path has a positive traffic distribution weighting (paragraphs [0032-0044], [0047-0054], [0065-0071], [0080-0081]).

18. As to claim 28, **Billhartz** teaches the invention as claimed in claim 27, wherein, in the event of failure of at least a part of the transmission paths with values that deviate from the minimum traffic distribution weighting, the at least one transmission path with a minimum traffic distribution weighting is given a traffic distribution weighting that deviates from said minimum weighting ([0060-0071]).

19. As to claim 29, **Billhartz** teaches the invention as claimed in to claim 27, wherein, in the event of failure of at least a part of the transmission paths with values that deviate from the minimum traffic distribution weighting, at



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least one further transmission path is calculated that is given the minimum traffic distribution weighting (0060-0071], [0080-0081)).

20. As to claim 30, **Billhartz** teaches the invention as claimed in claim 27, wherein a network node is controlled such that the transmission path on which a network node receives a data packet is blocked for the return transmission of the same data packet ([0036-0038]).

21. As to claim 31, **Billhartz** teaches the invention as claimed in to claim 27, wherein a multipath routing method is applied in the packet-switching data network ([0015], [0036], [0077]).

22. As to claim 32, **Billhartz** teaches the invention as claimed in claim 27, wherein a network operated in conformance with the Internet Protocol is used as the packet-switching data network ([0015], [0036-0037], [0077]).

23. As to claim 33, **Billhartz** teaches the invention as claimed in claim 27, wherein at least the failure of the first transmission path of a network node is communicated to at least one further network node ([0048-0062]).

24. As to claim 34, **Billhartz** teaches the invention as claimed in claim 33, wherein the transmission is effected by means of a protocol ([0015], [0036-0037], [0077]).

25. As to claim 35, **Billhartz** teaches the invention as claimed in claim 33, wherein a recalculation of at least one transmission path of at least one destination address is carried out in at least one further network node ([0048-0062]).

26. As to claim 36, **Billhartz** teaches the invention as claimed in claim 27, wherein at least one further traffic distribution weighting is assigned to the transmission paths with a minimum traffic distribution weighting entered in the routing table, said further traffic distribution weighting being used if a transmission path is interrupted ([0032-0044], [0050-0054], [0080-0081]).

27. As to claim 37, **Billhartz** teaches the invention as claimed in claim 36, wherein a transmission path is assigned respectively to the further traffic distribution weightings entered in the routing table and this traffic distribution weighting is used in the event of failure of the assigned transmission path ([0032-0044], [0050-0054], [0080-0081]).

28. As to claim 38, **Billhartz** teaches the invention as claimed, including a network node for a packet-switching data network, comprising: a routing table for entering destination addresses to which transmission paths and traffic distribution weightings are assigned, wherein at least two paths are provided per destination address, and wherein the routing table is structured in a

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manner such that the minimum traffic distribution weighting is assigned to at least one transmission path for a destination address and at least one other transmission path has a traffic distribution weighting that deviates from the minimum traffic distribution weighting and in that the router can be controlled such that in the event of interruption of at least one part of the paths with a traffic distribution weighting that deviates from the minimum traffic distribution weighting, and no other transmission path has a positive traffic distribution weighting, the transmission of at least one part of the packets is effected via the path with the minimum traffic distribution weighting (paragraphs [0032-0044], [0047-0054], [0065-0071], [0080-0081]).

### **Conclusion**

29. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Ha Nguyen, whose telephone number is (571) 272-3989. The examiner can normally be reached Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached at (571) 272-3949.

The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
THU HA NGUYEN  
PRIMARY EXAMINER

February 12, 2008